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# Workplan: ANTIDEGRADATION/OSRW RULEMAKING

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## Introduction

EPA requires that states must have an antidegradation policy and procedures to implement this policy as part of their water quality standards. The antidegradation policy and its implementation procedures are the mechanisms that states use to assure that the higher quality of its waters gained through the implementation of various permits and best management practices is maintained and protected. Indiana is currently only in partial compliance with this requirement and needs to bring our standards into full compliance during this rulemaking.

## The Problem

Indiana has developed an antidegradation policy and implementation procedures for waters within the Great Lakes System. The antidegradation policy in the Great Lakes System provides for protection and maintenance of existing and designated uses in all waters (Tier 1); protection and maintenance of existing water quality in high quality waters (those which, on a parameter by parameter basis, have water quality that is better than that required by the criteria) unless lowering of water quality can be justified (Tier 2); protection and maintenance of existing water quality in waters specifically designated as Outstanding State Resource Waters (OSRWs) with only a few exceptions (Tier 2.9 ?); and protection and maintenance of water quality in waters specifically designated as Outstanding National Resource Waters (ONRWs) (Tier 3). It should be noted that Indiana does not have any waters designated as ONRWs at the present time. Implementation procedures for each of these antidegradation “tiers” or classes have also been developed for waters in the Great Lakes basin and have been in the rules since 1997. Since that time, staff and others have encountered difficulty in implementing the current procedures and proposed revisions to the OSRW implementation procedures are currently at Region 5 EPA awaiting their approval. However, other problems with these implementation procedures have been identified and need to be addressed.

Outside the Great Lakes System, Indiana has an antidegradation policy that is similar to that in the Great Lakes System, but not identical. There is no specific mention of the OSRW class of waters and the wording is somewhat different. This policy has not been revised since 1990. Additionally there are no implementation procedures for the antidegradation policy for waters outside the Great Lakes System in our rules. Implementation procedures for these waters need to be developed.

## The Proposed Solution

The Antidegradation/OSRW workgroup will meet on several occasions (to be determined) to discuss the various issues involved in developing an antidegradation policy and implementation procedures that will provide for maintenance and protection of existing water quality in Indiana in a manner that will be approvable by EPA. At the end of the workgroup meeting schedule, the workgroup will have developed proposals for dealing with the various issues identified. These may take the form of possible rule language or may be in the form of recommendations that can be used by the Department

to develop rule language consistent with the recommendations. Issues which have been identified (others may be identified by the workgroup during the course of the meetings) include:

1. Consistent language in the antidegradation policy for the whole state for the various “tiers” or “classes”
2. The number of “Tiers” or “classes” of protection in the antidegradation policy
3. Requirements to place waters in the various “Tiers” or “classes”
4. Review/revision and/or development of procedures to implement the antidegradation policy for the various “tiers” or “classes” of waters
5. How to determine “existing water quality”

## Previous Rulemaking Related Efforts

Although Indiana has had an antidegradation policy in the water quality standards for some time, attempts to incorporate implementation procedures for the policy had been largely unsuccessful until the Great Lakes Water Quality Initiative (GLI) was federally promulgated in 1995. The GLI contained antidegradation implementation procedures for Bioaccumulating Chemicals of Concern (BCCs). The states were required to incorporate these procedures as part of the state’s adoption of the provisions of the GLI into state’s water quality standards. Indiana incorporated those antidegradation implementation procedures for BCCs into the water quality standards for the Great Lakes System as well as antidegradation procedures for non-BCCs which were based on similar procedures in the draft federal GLI (these were not promulgated by EPA as part of the final GLI). Revisions to the OSRW implementation procedures in the Great Lakes System rules were made in 2000 and these revisions are now being reviewed by EPA for approval. Attempts to incorporate antidegradation implementation procedures for waters outside the Great Lakes System in the rulemaking begun in 1998 were unsuccessful due, in great part, to issues regarding what qualifications would be required to designate a water as an OSRW and what antidegradation requirements would apply to waters so designated. Issues regarding implementation procedures for “High Quality” or “Tier 2” waters and how waters qualified for this designation were also not resolved.

Since that time, several things have happened that may provide new information or direction to this endeavor. First, there is existing language and public comments from the previous rulemaking that may still be useful to review and evaluate as to their utility. Additionally, there was a Water Quality Advisory Group that met over an extended period of time to discuss antidegradation issues, mainly related to the High Quality Water (Tier 2 or Class 2) portion of the antidegradation policy. While a final report is still being worked on, a draft report of this group’s work and recommendations is available for review and use. Finally, Senate Enrolled Act (SEA) 431 was passed in the legislature which contained language regarding general guidance for designating waters as OSRWs or ONRWs and developing antidegradation implementation procedures for waters so designated.

## Project Objectives

The objectives of this project are to discuss the various antidegradation issues identified above and provide recommendations to IDEM as to proposed rule language regarding these issues. This would be accomplished utilizing a balanced workgroup representing the various stakeholders. To accomplish these objectives, the workgroup must be committed to meaningful, focused discussion; a willingness to compromise and negotiate; and effective listening;

## Antideg/OSRW Rulemaking Workgroup

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**Others to be named**

## Communications

The antideg/OSRW rulemaking workgroup is free to contact each other for information or clarifications. Email is an effective way to exchange information and resolve issues involving several project team members. Team members should copy the IDEM workgroup facilitators on all email messages and other correspondence. All communications related to project scope and schedule should involve the IDEM workgroup facilitators. The IDEM facilitators are responsible for forwarding or otherwise distributing communications and documents developed. The IDEM facilitator is responsible for forwarding and/or copying all communications and documents to the IDEM Chief of the Rules Section who will maintain a file of all written materials, including communications and Meeting Summaries, related to this project. Time will be reserved at each meeting to develop the agenda for the following meeting.

A recorder, designated on a rotational basis at the beginning of each meeting, will record all workgroup meetings, and will prepare Meeting Summaries. These Meeting Summaries are not expected to contain verbatim recording of the discussions, but rather a summary of the main points discussed, agreements, disagreements and action items. At the end of each meeting, the designated recorder shall go over his/her notes to clarify these items. The designated recorder shall submit a draft written meeting summary via email to all meeting participants within 2 working days after conclusion of the meeting. Meeting participants are expected to provide comments on draft meeting summaries within 2 working days upon receipt of the draft summary to the designated meeting recorder for consideration of corrections, clarifications, etc. In turn, the designated meeting recorder shall submit final meeting summaries to the above workgroup members within 8 working days upon conclusion of the meeting.

## Project Scope

Several tasks have been identified for this project:

- Identification of additional participants in the workgroup.
- Develop workgroup operating guidelines.
- Review and revision, if necessary, of project workplan.
- Identification and agreement on issues to be discussed.
- Identification of background research and technical assistance needs
- Development of a timeline with milestones for the workgroup activities.
- Development of approach for public participation in the workgroup process.
- Discussion of background research and technical assistance reports and current issues.
- Development of recommendations for rule language on the identified issues.

## Tasks and Timelines

### Task 1. Identification of workgroup members

Input from the workgroup needed here as to potential additional members of this antideg/OSRW rulemaking workgroup (workgroup). Suggested workgroup size is between 10 to 15 members, with rather equitable representation of all stakeholders.

#### Deliverables and Schedule:

- Identification of additional workgroup members (by September 27).

### Task 2. Develop workgroup operating guidelines

Develop guidelines for the workgroup to follow during future meetings to assure appropriate conduct and process to allow for fair and equal participation by all members of the workgroup

#### Deliverables and Schedule:

- Workgroup guidelines developed at first workgroup meeting (week of October 28).
- Review and final approval of guidelines (Second meeting- Week of November 18).

### Task 3. Review and revision, if necessary, of project workplan

Workgroup would review and revise the workplan, if necessary.

#### Deliverables and Schedule

- Review workplan and propose revisions if necessary at first workgroup meeting (week of October 28).
- Approve of revised workplan at second meeting (week of November 18).

#### **Task 4. Identification and agreement on issues to be discussed**

Full workgroup discussion of potential issues and agreement as to those issues to be the focus of the workgroup.

##### **Deliverables and Schedule**

- Discussion of potential issues to be discussed -- first workgroup meeting (week of October 28)
- Agreement on issues to be the focus of workgroup -- second workgroup meeting (week of November 18).

#### **Task 5. Identification of background research and technical assistance needs**

Identify relevant background materials available for review. These might include federal guidance, Indiana GLI language, recent triennial review language and comments, SEA 431, Water Quality Advisory Group Report, other state's antidegradation requirements, etc.

##### **Deliverables and Schedule**

- Identify relevant background materials at second meeting of workgroup (week of November 18).
- Compile list of materials to be gathered for workgroup use/review at second workgroup meeting (Week of November 18).

#### **Task 6. Develop timeline with milestones for workgroup activities**

Full workgroup would review various tasks and propose schedule for discussion and milestones for each activity.

- Discussion of tentative timeline and milestones at second full workgroup meeting (week of November 18).
- Finalize and approve tentative timelines and milestones at second workgroup meeting (week of November 18).

#### **Task 7. Develop approach for public participation in the workgroup process**

Workgroup would discuss and agree on approach for involving others outside the workgroup in workgroup's process, discussions and recommendations.

- Discussion of how to involve/inform those outside the workgroup as to the workgroup activities—second workgroup meeting (week of November 18).
- Finalization and agreement on process—third workgroup meeting (week of December 9).

### **Task 8. Discussion of background research reports and various issues identified in Task 4.**

Workgroup will begin discussion of background materials and the various issues identified to be discussed. The following preliminary timeline with milestones is proposed.

- Begin discussion of background information and issues—third workgroup meeting (week of December 9).
- Discussions of these issues would continue at subsequent workgroup meetings (about 1 per month).
- Publication of First Notice of Proposed Rulemaking in Indiana Register on March 1, 2003.
- Continue discussion of issues and comments received after publication of First Notice (meetings 3 through 8 (December 2002 through July 2003)).

### **Task 9. Development of Rule Language**

Workgroup makes recommendations as to proposed rule language for Second Notice based on discussions, review of materials gathered and response to comments from first notice.

- Make recommendations to the agency as to rule language for publication as Second Notice for publication in October Indiana Register at meetings 9 and 10 (August and September).
- Review comments to Second Notice and make recommendations for changes to proposed rules at meetings 11, 12 and 13 (December 2003 and January and February 2004).
- Prepare language for Preliminary Adoption at April 2004 Water Board meeting.
- Review comments and propose changes to preliminary adopted rules at meetings 14 and 15 (June and July 2004).
- Prepare language for Final Adoption by Water Board at September 2004 Water Board meeting.